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Date: 5/4/06

Matthew J. Laskoski

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Evans et al.

Serial No. 10/734,587

Art Unit: 3654

Filed: December 15, 2003

Examiner: Rakesh Kumar

For: SINGLE DISPENSING FILM STRIP CONTAINER

RESPONSE

To the Director of the Patent and Trademark Office

Sir:

In response to the office action dated April 6, 2006, the Applicant provisionally elects claims of Species I, Figures 1 - 3D and claims 1 - 10, 15 - 17, and 20 and traverses the requirement for restriction.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required.

MPEP 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not independent inventions. That same section points out that independent means that there is no

disclosed relationship between the subjects disclosed.

The Examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the Examiner concedes that the subject matter is not independent.

The Examiner's requirement for restriction is based upon his holding that the subjects are distinct. That is, as pointed out in Section 802.01, the Examiner has held that the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE
(novel and unobvious) OVER EACH OTHER.

The Examiner has held under Section 803 that the claimed inventions:

are able to support separate patents and they are ... distinct (MPEP Section 806.05-
806.05(i)).

However, Section 803 unequivocally states:

If the search and examination of an entire application can be made without serious
burden, the Examiner must examine it on the merits, even though it includes claims to
distinct or independent inventions.

So that Section 803 makes its point clearly, the serious burden requirement is repeated under the
title:

CRITERIA FOR RESTRICTION BETWEEN
PATENTABLY DISTINCT INVENTIONS

Section 803 goes on to state that there are two criteria for a restriction requirement: one,

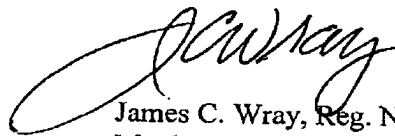
that the inventions must be distinct as claimed; and two, that there must be a serious burden on the Examiner if restriction were not required.

Section 803 goes on to state under GUIDELINES that an Examiner must provide reasons and/or examples to support conclusions. The Examiner has never stated that there would be a serious burden on the Examiner if restriction were not required. Indeed, there should be no serious burden on the Examiner.

Moreover, Section 806.05(h) emphasizes "as claimed" and falls under the cautions of 806 and 806.05, both of which state, "where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper". In the present case the particular criteria and guidelines of 803 must be followed in that there must be a serious burden on the Examiner if restriction were not required. In the present case, all of the species must be searched. All are properly classified and searched together, and the search for one species would not be complete without searching for all of the other species.

Reconsideration and allowance of the application are requested. Reconsideration and withdrawal of the restriction requirement are requested.

Respectfully,



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